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Request for a subvention to the Extraordinary Chambers in the Courts of Cambodia

Report of the Advisory Committee on Administrative and Budgetary Questions

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions considered the report of the Secretary-General (A/71/338) in which he provides details on the progress achieved by the Extraordinary Chambers in the Courts of Cambodia, the current financial situation of the Extraordinary Chambers, a projection regarding the anticipated use of the approved commitment authority for 2016 and information on the revised budget of the Chambers for 2017. He seeks the General Assembly's approval of an appropriation for a subvention for the international component of the Chambers in the amount of $16.2 million for 2017. During its consideration of the report, the Committee met representatives of the Secretary-General, who provided additional information and clarification, concluding with written responses received on 23 September 2016.

II. Background

2. In its resolution 57/228 A on the Khmer Rouge trials, the General Assembly welcomed the efforts of the Secretary-General and the Government of Cambodia towards the establishment of extraordinary chambers within the existing court structure of Cambodia, with international assistance, for the prosecution of crimes committed during the period of Democratic Kampuchea. Subsequently, the Assembly approved, in its resolution 57/228 B, the Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea, which regulated the cooperation between the United Nations and the Government in bringing to trial senior leaders of Democratic Kampuchea and those

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who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom and international conventions recognized by Cambodia that were committed from 17 April 1975 to 6 January 1979. In paragraph 3 of the resolution, the Assembly also decided that the expenses of the Extraordinary Chambers for the international component would be defrayed by the United Nations in accordance with the relevant provisions of the Agreement and would be borne by voluntary contributions from the international community.

3. In 2005, the Secretary-General reported to the General Assembly that sufficient contributions and pledges had been received to fund the international staff of the Extraordinary Chambers and their operations for a sustained period (see A/60/565, para. 3). The Agreement thus entered into force on 29 April 2005. Since then, the Secretary-General has issued six reports on the Khmer Rouge trials in which he has provided updates on the progress achieved towards establishing and operating the Chambers (A/62/304, A/67/380, A/68/532, A/69/536, A/70/403 and A/71/338).

4. The Extraordinary Chambers comprise both national and international components that are separately financed. The Government of Cambodia is responsible for the salaries of the Cambodian judges and local personnel, while the United Nations is responsible for those of the international judges and international personnel, pursuant to articles 15 and 16 of the Agreement.

5. In his report of 2012 on the Khmer Rouge trials (A/67/380, para. 66), the Secretary-General first alerted Member States to the adverse cash position and the steadily worsening financial position of the Extraordinary Chambers. At that time, he indicated that the international component faced an acute funding shortfall that could jeopardize the future operations of the Chambers. In 2013, he informed the General Assembly that the national component was experiencing a serious shortfall in pledges for that year, creating a funding crisis of greater severity than that of the international component (see A/68/532, para. 31).

6. Following its consideration of the report of the Secretary-General and the conclusions and recommendations of the Advisory Committee thereon (see A/68/7/Add.12), the General Assembly, in its resolution 68/247 B, authorized the Secretary-General, as an exceptional measure, to enter into commitments in an amount not to exceed $15.54 million to supplement the voluntary financial resources of the international component for the period from 1 January to 31 December 2014. Those funds, however, were never drawn upon, after voluntary funding eventually covered the international component's obligations during 2014 in full.

7. The Secretary-General highlighted the continuing financial challenges facing both the international and national components of the Extraordinary Chambers in his subsequent report (A/69/536) and requested the approval of a subvention of up to $28,983,200 (comprising $23,954,400 for the international component and $5,028,800 for the national component) for the period from 1 January to 31 December 2015. By its resolution 69/274 A, the General Assembly endorsed the recommendation contained in the report of the Advisory Committee (A/69/652) and authorized the Secretary-General, again as an exceptional measure, to enter into commitments in an amount not to exceed $12.1 million to supplement the voluntary financial resources of the international component of the Chambers for the period from 1 January to 31 December 2015. Subsequently, in his report of 2015 (A/70/403), the

Secretary-General requested the approval of a subvention of up to $25,151,300 for the period from 1 January to 31 December 2016. In its resolution 70/248 A, the General Assembly endorsed the recommendation contained in the report of the Advisory Committee (A/70/7/Add.20) and authorized the Secretary-General, again as an exceptional measure, to enter into commitments in an amount not to exceed $12.1 million for the period from 1 January to 31 December 2016.

III. Case progress and management

8. Periodic reports of the Secretary-General have contained details concerning the progress of cases before the Extraordinary Chambers (see A/58/617, A/59/432 and Add.1, A/60/565, A/62/304, A/67/380, A/68/532, A/69/563 and A/70/403). Information on the progress made in the four case files during the most recent period is provided in paragraphs 1 to 18 of the most recent report (A/71/338). It is indicated that case 001, against Kaing Guek Eav, alias "Duch", was the first case tried before the Chambers. His conviction became final by the appeal decision of the Supreme Court Chamber of 3 February 2012. He was sentenced to life imprisonment. Case 002, against Nuon Chea and Khieu Samphan, has been severed into two cases: 002/01 and 002/02. In case 002/01, the Trial Chamber pronounced its judgment on 7 August 2014, sentencing the accused to life imprisonment. Both appealed against the convictions. The delivery of the judgment of the Supreme Court Chamber is expected in November 2016, the final appeal hearings having been held from 16 to 18 February. In case 002/02, the trial began with opening statements on 17 October 2014, and evidentiary hearings began on 8 January 2015. As at 30 June 2016, the Trial Chamber had completed the hearing of evidence relating to three trial segments, including evidence concerning allegations of genocide. Judicial investigations are continuing in cases 003 and 004, with the case against Im Chaem severed into case 004/01 on 5 February 2016.

9. Responding to the request of the General Assembly in its resolution 68/247 B for a case completion strategy along with a clear road map, the Extraordinary Chambers submitted a completion plan that detailed the remaining work to be completed in the proceedings of which they were currently seized. This plan was first prepared in March 2014 and has since been revised periodically.[1] On the basis of current projections, the earliest anticipated completion of judicial proceedings in case 002 will be in the fourth quarter of 2017, with the delivery of a trial judgment in case 002/02, absent any appeal. Current projections estimate the delivery of any appeal judgment in that case to be in 2019. It is indicated that timelines for cases 003, 004 and 004/01 in terms of trial milestones cannot currently be foreseen owing to the factors influencing continuing investigations. The phases of judicial investigation in cases 003 and 004 (including 004/01) are projected to conclude in 2016 and 2017, respectively. The projected milestones include the conclusion of judicial investigation and the issuance of closing orders in cases 003, 004 and 004/01, with decisions of the co-investigating judges to either send the cases for trial, in whole or in part, or to dismiss the proceedings.

[1] The most recent revision of the case completion plan is contained in revision 9, dated 20 July 2016, and is available from www.eccc.gov.kh/en/about-eccc/finances.

10. The Advisory Committee notes the progress made in the current judicial proceedings and stresses the importance of the regular updates to the comprehensive completion plan. At the same time, the Committee notes that the revised plan now foresees judicial activity for several years beyond the current financial period and notes with concern the potential financial implications of the timeline. The Committee recalls that the mandate of the Extraordinary Chambers is time-limited and reiterates its encouragement of the full implementation of all measures necessary to expedite case completion, including the need for the plan to reflect firmer completion milestones, while fully respecting the requirements of the judicial process.

IV. Current financial position

11. In its consideration of the most recent report of the Secretary-General, information was provided to the Advisory Committee, upon request, indicating the funding sources of the Extraordinary Chambers for the period 2005-2016 (see annex).

National component

12. In his report, the Secretary-General recalls that, in 2015, the national component had suffered from serious financial constraints, leading to intensive efforts by the Extraordinary Chambers, together with senior Cambodian government officials, in addition to Cambodian ambassadors in foreign capitals, to jointly seek support from key Governments for the national component. Those efforts resulted in sufficient funds being raised for the national component in 2015 (see A/71/338, para. 27). The year 2016 has seen an improvement in the funding situation for the national component. The Advisory Committee was informed, upon enquiry, that the Government had met 62 per cent of the costs, with a contribution of $4.15 million to the total requirements for the national component estimated at $6,552,700, and that international donors were expected to contribute $1,782,500, leaving a projected shortfall of $585,200 for 2016. As at August 2016, however, $1.6 million in related pledges by international donors for 2016 was still outstanding (see ibid., annex, table A.5). The Committee was also informed that the matter of the projected shortfall had been taken up with senior officials of the Government.

13. Pursuant to articles 15 and 16 of the Agreement, the United Nations is responsible for defraying the costs required to support the international component of the Extraordinary Chambers, while the Government is responsible for defraying the costs of the national component, including salaries of national personnel, utilities and service expenses of the Chambers. In its resolutions 69/274 A and 70/248 A, the General Assembly encouraged all Member States to provide voluntary support for both the international and national components and requested the Secretary-General to continue his intensive efforts to obtain additional voluntary contributions, including by broadening the donor base, for funding the future activities of the Chambers.

14. **The Advisory Committee notes the commitments made by the Government of Cambodia to meeting the terms of the Agreement. The Committee trusts that the Secretary-General will continue to actively engage at the highest level with**

the relevant authorities of the Government to ensure that the obligations arising from the terms of the Agreement are fully observed.

International component

15. As indicated in paragraph 7 above, in both 2015 and 2016 the funding of the international component of the Extraordinary Chambers has been reliant on the subventions approved by the General Assembly, whereby authorizations were given for the Secretary-General, as an exceptional measure, to enter into commitments in an amount not to exceed $12.1 million each year to supplement the voluntary financial resources of the international component (see resolutions 69/274 A and 70/248 A). The Advisory Committee notes that the final drawdown for 2015 of the authorized commitment authority of $12.1 million amounted to $10.68 million, owing to the receipt of voluntary contributions (see A/71/338, para. 32). Expenditure for 2016 is estimated at $10.93 million, against an authorized commitment authority of $12.1 million, with anticipated pledges and contributions totalling $13.13 million (see ibid., annex, tables A.3.1 and A.3.2).

16. The Secretary-General indicates in his report that, as at 31 July 2016, voluntary contributions of $7.65 million had been received for the international component for 2016, which, together with the drawdown of the commitment authority in an amount of $6.1 million, covered the expenditure for the first seven months of 2016 (ibid., para. 34).

17. The Secretary-General also indicates that, historically, voluntary funding for the international component of the Extraordinary Chambers has been raised each year from a limited number of Governments, most of which participate in a principal donors group. As part of efforts to raise the funds necessary to cover the international component, in 2008 the Secretary-General designated a special expert to provide short-term technical assistance and guidance to the United Nations Assistance to the Khmer Rouge Trials. The current Special Expert assumed his duties in January 2012 on a part-time basis and has developed a fundraising strategy for the Chambers in accordance with his terms of reference. As part of the strategy, outreach was undertaken in 2016 to potential new donor Governments. The principal donors group continued to meet regularly throughout 2016 to further discuss the strategy and the progress of the fundraising activities (see ibid., paras. 26 and 28). The Secretary-General indicates that his written appeal to all Member States, bilateral requests by senior United Nations officials to donor countries and a written appeal from the then Chair of the group to permanent missions of Member States in New York in 2015 have been unsuccessful thus far in generating significant new sources of funding (see ibid., para. 26).

18. **In view of the persistent funding challenges faced by the Extraordinary Chambers, the Advisory Committee stresses again the ongoing need for intensified fundraising efforts by the Secretary-General, including by broadening the donor base for the Chambers, so that their work can be brought to a successful conclusion.**

V. Resource requirements and request for a subvention to the Extraordinary Chambers

19. For 2017, resource requirements for the international component in the amount of $24,261,300 would provide for the continuation of 157 posts (12 D-2, 1 D-1, 7 P-5, 15 P-4, 39 P-3, 7 P-2, 22 Field Service, 11 National Professional Officer and 43 General Service) and non-post items (see A/71/338, table 2 and para. 36). As recommended by the Advisory Committee and endorsed by the General Assembly (see A/69/652, para. 39, and resolution 69/274 A, sect. I, para. 4), a justification is provided for the resource requirements without prejudice to the voluntary nature of the current funding arrangements. The Committee was informed, upon enquiry, that the United Nations rules and regulations pertaining to human resources management, finance and procurement applied to the international component of the Extraordinary Chambers. **The recommendations of the Advisory Committee relating to any possible future requests for subvention are provided in section VI below.**

20. In terms of financing sought in 2017, the Secretary-General is seeking the approval of the General Assembly of an appropriation for a subvention for the international component of the Extraordinary Chambers in the amount of $16,240,500, which, when combined with expected contributions amounting to $8,020,800, would provide the necessary funding for the full 2017 budget in the amount of $24,261,300 (see A/71/338, annex, tables A.3.1 and A.3.2). The Advisory Committee notes that the group of interested States approved a budget of $20.1 million to cover the costs for the international component in 2017 (see ibid., para. 35). In his report, however, the Secretary-General states that the revised resource requirements of the international component for 2017 are estimated at $24.3 million (ibid., para. 45 (b)). It is indicated that the differences in the resource estimates for the period have arisen owing to extensions in the projected timeline for investigations and related judicial activity. **The Advisory Committee is of the view that any future variance between the level of the budget approved by the group of interested States for the requirements of the Extraordinary Chambers and the total resource requirements stipulated in the report of the Secretary-General must be properly explained, with an indication that the appropriate approval process has been followed with respect to any budget revisions.**

21. The Secretary-General indicates in his report that he will continue intensive fundraising efforts. He also indicates, however, that the requested subvention would allow him to ensure a reasonable duration of staff contracts should there be insufficient extrabudgetary funds available. He further indicates that the request is based on the pattern of contributions over the period 2014-2016 and the expectation that resources will be pledged incrementally and in varied amounts (see A/71/338, para. 37).

22. The anticipated shortfall in pledges for the international component as at August 2016 amounted to $10.93 million for 2016 and $16,240,500 for 2017, representing the full amount requested as a subvention. Information on the financial status of both components of the Extraordinary Chambers is contained in the annex to the report of the Secretary-General. **The recommendations of the Advisory Committee relating to the funding situation are provided in section VI below.**

Conversion of posts

23. The Secretary-General proposes the conversion of three positions of the international component (1 P-3, 1 P-2 and 1 National Professional Officer) from general temporary assistance to posts as a result of the continuing workload of the Extraordinary Chambers. The Advisory Committee is not convinced that conversion to posts is warranted, given that the work of the Chambers is inherently time-bound in nature and that judicial activity is expected to conclude in the coming years, as indicated in the completion plan. **While recognizing that the staffing proposals are not being submitted for the approval of the General Assembly, the Advisory Committee considers that the proposed conversion of three positions from general temporary assistance to posts is not justified.**

Other staff costs

24. The Advisory Committee was informed, upon enquiry, that the increased requirements for "Other staff costs" (see A/71/338, annex, table A.3.2) reflected the increase in general temporary assistance requested by the Pre-Trial Chamber and the Trial Chamber. In view of a surge in workload (appeals) before the Pre-Trial Chamber in 2017, there was a need to provide additional resources for the Chamber to reach decisions within the projected timelines identified in the completion plan. The Committee was also informed, upon enquiry, that further increases in "Other staff costs" in the national component (see ibid., table A.6.3) were due to general temporary assistance required by the national co-investigating judge to assist him with investigations in cases 003 and 004 and by the national judges of the Pre-Trial Chamber for legal research concerning appeals against closing orders. **The Advisory Committee encourages the Extraordinary Chambers to exercise restraint and judicious use of general temporary assistance without prejudice to the requisite caseload requirements. The Committee expects that the Chambers will undertake all efforts to exercise budgetary discipline and to identify operational efficiencies in this regard.**

VI. Conclusions and recommendations

25. The Advisory Committee notes that, from 2005 to 2013, the Extraordinary Chambers were fully funded through voluntary contributions. As indicated in paragraphs 6 and 7 above, in 2014, in paragraph 7 of section I of its resolution 68/247 B, the General Assembly authorized the Secretary-General, as an exceptional measure, to enter into commitments in an amount not to exceed $15.54 million to supplement the voluntary financial resources of the international component. Those funds, however, were never drawn upon, given that voluntary funding eventually covered in full the international component's obligations during 2014. For 2015, the Assembly authorized commitments in an amount not to exceed $12.1 million and, by the end of 2015, $10.68 million in expenditure had been incurred against the authorized commitment authority. The Committee also notes that, of the authorized commitment authority of $12.1 million for 2016, estimated expenditure of $10.93 million is anticipated.

26. **The Advisory Committee notes once more the adverse funding situation of the Extraordinary Chambers, the persisting financial difficulties and the increasing**

reliance on the commitment authorities authorized by the General Assembly. In this regard, the Committee recalls resolutions 69/274 A and 70/248 A, by which the Assembly encouraged all Member States to provide voluntary support for both the international and national components of the Chambers and requested the Secretary-General to continue his intensive efforts to obtain additional voluntary contributions.

27. The Advisory Committee also notes that, after four consecutive requests since 2013 for subventions to support the international component of the Extraordinary Chambers, the practice is in fact no longer exceptional in nature. Therefore, the Committee recommends that the General Assembly request the Secretary-General to provide fuller and more detailed justification, to better substantiate further subvention requests, if any.

28. The Advisory Committee recalls that the General Assembly, in its resolution 57/228 B, decided that the expenses of the international component of the Extraordinary Chambers should be borne by voluntary contributions from the international community. The Committee therefore reaffirms its view that a decision to appropriate an amount of the budget of the international component for 2017 would undermine the voluntary nature of the current funding arrangements and related fundraising efforts. However, given the current funding challenges faced by the Chambers and the need to ensure the expeditious conclusion of the remaining cases before them, the Advisory Committee considers that for 2017 the United Nations should provide support at a level consistent with the amount of the actual drawdown of the commitment authorities approved for 2015 and 2016.

29. In view of the projected funding shortfall in the international component for 2017, the fluid nature of outstanding pledges and commitments and the need to ensure the continued operations of the Extraordinary Chambers, the Advisory Committee recommends that the General Assembly authorize the Secretary-General to enter into commitments in an amount not to exceed $11 million to supplement the voluntary financial resources of the international component for the period from 1 January to 31 December 2017 as a bridging financing mechanism, in lieu of an appropriation. The Committee also recommends that the Assembly request the Secretary-General to report on the use of the commitment authority to the Assembly during the main part of its seventy-second session.

30. The Advisory Committee continues to stress that its recommendations are made on the basis that:

(a) Should voluntary contributions be received in excess of the remaining requirements for the international component of the Extraordinary Chambers for 2017, any regular budget funds provided to the Chambers for that period would be refunded to the United Nations;

(b) Appropriate measures for achieving operational savings and efficiencies in the Extraordinary Chambers are in place (see paras. 23 and 24 above);

(c) The Extraordinary Chambers engage in all efforts to increase the level of voluntary contributions;

(d) Appropriate monitoring and reporting arrangements are in place to ensure an incremental release of funds to the international component of the Extraordinary Chambers, based on the monthly cash position;

(e) The Secretary-General continues his efforts to ensure that the terms of the Agreement are fully observed.

Annex

Funding source for the period from 1 January 2005 to 31 August 2016 for the Extraordinary Chambers in the Courts of Cambodia

	1 January-31 December 2005	*1 January-31 December 2006*	*1 January-31 December 2007*	*1 January-31 December 2008*	*1 January-31 December 2009*	*1 January-31 December 2010*	*1 January-31 December 2011*	*1 January-31 December 2012*	*1 January-31 December 2013*	*1 January-31 December 2014*	*1 January-31 December 2015*	*1 January-31 August 2016**	*Total*
International component Extrabudgetary funding													
Armenia	1 000												**1 000**
Australia	842 000			1 773 783	3 822 200	1 313 850	3 925 600	2 500 880	2 984 475	2 854 444	2 279 525		**22 296 758**
Austria		120 000	120 000	120 000	87 720	38 610	39 130	26 452	26 494	27 116	21 758		**627 280**
Belgium		189 804											**189 804**
Canada (Canadian International Development Agency)	807 885		954 381		725 272								**2 487 538**
Chile												5 000	**5 000**
Denmark				591 716						1 457 275			**2 048 991**
Finland						93 807	190 722	191 235	1 564 299		1 096 200		**3 136 263**
France	1 260 525	2 112 920	707 000	770 700	736 000	657 500	715 900	392 370	655 200		279 625	272 725	**8 560 465**
Germany	1 000 000	1 021 360	1 011 290		2 187 000	1 924 500	672 500	1 217 139	203 175	946 330	558 400	558 700	**11 300 394**
Ireland	153 437	165 724							33 108				**319 161**
Japan	21 606 150				17 943 000	6 356 630	11 696 225	2 545 760	2 872 700	3 217 620	1 221 818		**67 459 903**
Liechtenstein													**33 108**
Luxembourg		60 685		78 325									**139 010**
Namibia	500												**500**
Netherlands		600 939		1 199 970									**1 800 909**
New Zealand	357 175			150 975		35 255	80 215	244 195					**867 814**
Norway	1 057 578			845 279		967 946	1 126 625	1 049 747	1 040 132		728 200	710 564	**7 526 069**
Qatar											20 000		**20 000**
Republic of Korea		450 000			400 000	500 000		300 000	500 000	500 000	500 000	500 000	**3 650 000**
Spain		320 600	336 150	350 109		71 870							**1 078 729**
Sweden	401 565							3 014 498	2 587 370	2 187 600	1 783 470		**9 974 503**
Switzerland			7 364										**7 364**
United Kingdom	938 300	873 000		1 978 550			1 611 800		3 740 426	836 350	285 494	318 465	**10 582 385**
United States					1 782 000	4 700 000	1 400 000	5 093 852	3 113 551	4 734 977	4 700 495	5 288 345	**30 813 220**
European Union									3 603 960		4 177 919		**7 781 879**

	1 January-31 December 2005	1 January-31 December 2006	1 January-31 December 2007	1 January-31 December 2008	1 January-31 December 2009	1 January-31 December 2010	1 January-31 December 2011	1 January-31 December 2012	1 January-31 December 2013	1 January-31 December 2014	1 January-31 December 2015	1 January-31 August 2016[a]	Total
David Scheffer Foundation Open Society Institute									2 000				**2 000**
			61 174										**61 174**
Information Today				500									**500**
Microsoft		100 000											**100 000**
Subtotal	**28 425 114**	**6 015 032**	**3 197 359**	**7 859 906**	**27 683 192**	**16 659 968**	**21 458 716**	**16 576 128**	**22 926 890**	**16 761 712**	**17 652 904**	**7 653 799**	**192 870 720**
Regular budget subvention	–	–	–	–	–	–	–	–	–	–	10 678 359	10 926 800	**21 605 159**
Subtotal	**28 425 114**	**6 015 032**	**3 197 359**	**7 859 906**	**27 683 192**	**16 659 968**	**21 458 716**	**16 576 128**	**22 926 890**	**16 761 712**	**28 331 263**	**18 580 599**	**214 475 879**
National component[b]													
Government of Cambodia	–	495 568	505 750	1 505 750	–	2 300 000	350 000	1 700 000	3 600 000	3 959 000	4 100 000	4 150 000	**22 666 068**
International donors	–	535 463	472 752	1 587 689	5 819 148	5 607 227	8 598 520	7 226 571	668 852	1 324 310	2 468 600	1 782 500	**36 091 632**
United Nations trust fund	–	656 085	2 712 593	1 770 433	109 021	–	123 285	–	3 255 000	–	–		**8 626 417**
United Nations loan	–	–	–	–	–	–	–	–	–	780 000	–		**780 000**
Subtotal	**–**	**1 687 116**	**3 691 095**	**4 863 872**	**5 928 169**	**7 907 227**	**9 071 805**	**8 926 571**	**7 523 852**	**6 063 310**	**6 568 600**	**5 932 500**	**68 164 117**
Total	**28 425 114**	**7 702 148**	**6 888 453**	**12 723 778**	**33 611 361**	**24 567 195**	**30 530 522**	**25 502 699**	**30 450 742**	**22 825 022**	**34 899 863**	**24 513 099**	**264 431 300**

[a] 2016 contribution does not include the outstanding and anticipated pledges.

[b] Figures provided by the national component of the Extraordinary Chambers.